



WISCONSIN LEGISLATIVE COUNCIL

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CLEARINGHOUSE RULE 01-053

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

General Comment:

The proposed rule repeals and recreates ch. NR 166, Wis. Adm. Code, although it appears that a relatively small part of ch. NR 166 is actually changed by the proposed rule. Standard drafting practice calls for the use of strikethroughs to show deleted materials and underscoring to show new material whenever practicable. Repealing and recreating provisions in the rule should be done only when changes are extensive, and only within the smallest subunit of the proposed rule where such extensive changes occur. Standard drafting practice gives the greatest possible notice of the changes that are being made to the current rule. The repeal and recreation of the entire chapter makes it difficult for the public, loan applicants, consultants and the Legislature to determine what changes are being made.

2. Form, Style and Placement in Administrative Code

a. It is unclear why “project” is included in the title of s. NR 166.03. Normally, the definitions section is simply titled “definitions.”

b. The meaning of “biennial finance plan” in s. NR 166.03 (4) cannot be determined without reading the cross-referenced statute. A note that briefly describes the statutory plan would aid the reader.

c. A number of rules and standards are referenced in s. NR 166.06 (1) (a). A cross-reference should be provided for each of these rules or standards.

d. “Cost-effective” should be hyphenated in s. NR 166.06 (1) (d).

e. In s. NR 166.14 (1) (b), the first sentence does not grammatically lead into the following subunits. Consequently, the sentence should be renumbered as subd. 1. and the remaining subdivisions and internal cross-references, if any, should be renumbered accordingly. [See also ss. NR 166.15 (1) (k), 166.18 (2), 166.20 (3) and 166.24 (1).]

f. It appears that “breach of the financial assistance agreement” should be replaced by the defined term “breach of contract” in s. NR 166.15 (1) (g).

g. In s. NR 166.15 (1) (k) 2., the phrase “all of” should proceed the phrase “the following areas.” [See also ss. NR 166.23 (3) (intro.) and 166.24 (intro.).]

h. It appears that the phrase “final project closeout” in s. NR 166.17 (3) (b) should be replaced by the defined term “project completion.” See also the title of s. NR 166.17 (4) and s. NR 166.20 (3) (b). Also, it is not clear how the requirements for final disbursement in s. NR 166.17 (4) (b) relate to the requirements for project completion in the definition of that term in s. NR 166.03 (32m). If the term “final project closeout” is different than the term “project completion,” it should be defined.

i. Does the reference to the date that the project is closed out in s. NR 166.20 (3) (intro.) mean the same thing as the date of project completion?

j. In s. NR 166.24 (1), the use of the phrase “and or” should be avoided. The phrase should be replaced by the word “or.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 166.03 (16), is the cross-reference to “sub. (8)” correct?

b. The U.S. Code citation should be included in the federal cross-reference in s. NR 166.24 (intro.).

c. In s. NR 166.24 (1) (intro.), the phrase “any of the following categories” should be replaced by the phrase “in any of the categories in par. (a) or (b).”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The term “breach of contract” is defined in s. NR 166.03 (5). One element of this definition is failure of a local governmental unit to comply with its resolution authorizing the issuance of bonds. Is this resolution a type of a contract, or is it merely a unilateral action of the local governmental unit?

b. An unnecessary hyphen is included between “system” and “included” in s. NR 166.03 (16).

c. The definition of “future growth” in s. NR 166.03 (17) refers to excess capacity that is beyond normally accepted standard engineering practice. This suggests that there is a standard engineering practice to account for future growth. Is this the intent of this definition? If there is such a standard engineering practice, should it be codified in the rule? “Above and beyond” should be replaced by “exceeds.” Is “normally accepted” surplusage?

d. The first part of the definition of “population” in s. NR 166.03 (30) is reasonably clear and precise. The second part of that definition is vague. Who may make population estimates for a public water system that is not owned by a city, village or town? What methodology for making this population count is acceptable?

e. In determining project eligibility under s. NR 166.06 (1) (b), is age the only reason for replacing infrastructure? It appears that the conditions that require infrastructure replacement could have other causes.

f. In s. NR 166.06 (1) (e), it is not clear how a public water **system** is “restructured.” The remainder of that paragraph suggests that it is the **management** of a public water system that is to be restructured.

g. The word “impacting” should be replaced by “affecting” in s. NR 166.12 (6) (b).

h. In s. NR 166.12 (4), in the phrase “small business in rural areas, minority- and women-owned businesses,” the comma following the word “areas” should be replaced by the word “and.”

i. The phrase “defined scope of work” in s. NR 166.12 (6) (c) could be clarified. This phrase is vague.

j. Section NR 166.15 (1) (f) provides that a financial assistance agreement must require that a recipient allow the department access to records of the contractor and the subcontractor which are pertinent to the project. How will the recipient comply with this requirement if the recipient does not maintain custody of the records? At the least, a financial assistance agreement should require a recipient to enter into an agreement with a contractor that either provides contractor and subcontractor records to the recipient or provides the recipient with access to these records.

k. The reference to the expected substantial completion date in s. NR 166.15 (1) (j) is unclear. Is this the predicted or the actual substantial completion date?

l. The word “final” in s. NR 166.18 (2) (c) appears to be surplusage.

m. The phrase “final termination settlement” in s. NR 166.20 (3) (a) could be clarified.

n. The concept of final resolution of litigation in s. NR 166.20 (3) (b) could be clarified by specifying what events constitute final resolution. Also, in that paragraph, it appears that “from” should be replaced by “after.”

o. Does the phrase “from a court of appropriate jurisdiction” add anything to s. NR 166.21 (1) (d)?

p. The request for variance must state the “section of this chapter” from which a variance is sought. See s. NR 166.23 (3) (b). Should this be replaced by “provision of this chapter,” in order to allow variances from a part of a section?

q. It appears that “main” in s. NR 166.24 (3) (L) should be replaced by either “a main” or “water mains.”

r. Should the cross-reference in s. NR 166.24 (5) be to “subs. (1) to (4m)”?

s. In s. NR 166.25, is sub. (7) a statement of sub. (5)? If so, it should be deleted. If not, the phrase “45 days of” should be replaced by the phrase “45 days after” and the reference to “sub. (5)” should be replaced by a reference to “sub. (6).”

t. In s. NR 166.26 (3) (a), the word “do” should be replaced by the word “does.” Also, in sub. (3) (f), what is the “biennial present value subsidy cap”? A definition or an appropriate cross-reference may be helpful.